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RECEIVED

NOV 30 2006

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15  
16 JOHN ARMSTRONG, et al.,

17 Plaintiffs,

18 v.

19 SCHWARZENEGGER, et al.,

20 Defendants.

C 94 2307 CW

STIPULATION AND  
PROPOSED ORDER

21  
22 *on this motion*  
The hearing set for December 22 is hereby taken off calendar as the parties hereby  
23 stipulate as follows:

24 Defendants shall not discriminate against, and shall consider for transfer to out-of-state  
25 facilities, all appropriate Armstrong class members. Armstrong class members have the same  
26 rights with respect to transfers as non-class members and shall be considered pursuant to policies  
27 consistent with this Order. The Armstrong members appropriate for transfer are set forth in  
28 Defendants' policy, which is attached as Exhibit A.

Stipulation and Proposed Order

Armstrong, et al. v. Schwarzenegger, et al.  
C 94 2307 CW

1 Starting fourteen days after this Order is issued, Defendants, their agents and  
2 employees shall not transfer any prisoners to out-of-state facilities under contracts that lack the  
3 required language guaranteeing non-discrimination, as set forth in the Permanent Injunction of  
4 March 21, 2001. This Order does not affect transfers carried out under the Interstate Corrections  
5 Compact and/or the Western Interstate Corrections Compact.

6 Defendants shall, within fourteen days of this Order, issue and implement a policy  
7 providing for the transfer of appropriate Armstrong class members to out-of-state facilities. The  
8 parties shall meet and confer over Plaintiffs' objections, if any. If the parties do not resolve their  
9 disputes, either party may bring any unresolved issues before the Court for determination.

10 Within thirty days of this Order, the parties shall meet and confer regarding monitoring  
11 of the provisions of this Order. If the parties do not resolve their disputes, either party may bring  
12 any unresolved issues before the Court for determination.

13 IT IS SO STIPULATED.

14  
15 Dated: 11/30/04

16 By: Katherine Nelson  
17 KATHERINE KYLIN NELSON  
18 Deputy Attorney General  
19 Attorneys for Defendants

20 Dated: 11/29/06

21 By: Sara Norman  
22 SARA NORMAN  
23 Attorneys for Plaintiff

24 IT IS SO ORDERED.

25 CLAUDIA WILKEN

26 Dated: \_\_\_\_\_

27 By: THE HONORABLE CLAUDIA WILKEN  
28 United States District Judge

OST:slp, l.wpd

Stipulation and Proposed Order

Armstrong, et al, v. Schwarzenegger, et al.  
C942307 CW

**DECLARATION OF SERVICE BY FACSIMILE AND MAIL**

Case Name:

No.: C 94 2307 CW

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with Golden State Overnight Mail. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with Golden State Overnight Mail that same day in the ordinary course of business.

On November 30, 2006, I served the attached *Stipulation And Proposed Order* by transmitting a true copy by electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows:

Holly Baldwin, Esq.  
Rosen, Bien & Galvan, LLP  
315 Montgomery Street, 10<sup>th</sup> Floor  
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Attorney for John Armstrong

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dspector@prisonlaw.com  
Co-Counsel for Plaintiffs

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 30, 2006, at Sacramento, California.

K. Paris  
Declarant

  
Signature

**DECLARATION OF SERVICE BY ELECTRONIC AND US MAIL**

Case Name: Armstrong, et al. v. Schwarzenegger, et al.

No.: C 94 2307 CW

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with US Mail that same day in the ordinary course of business.

On December 7, 2006, I served the attached *Amended Stipulation And Proposed Order* by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:


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Donald Specter, Esq.  
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dspecter@prisonlaw.com  
Co-Counsel for Plaintiffs

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 6, 2006, at Sacramento, California.

K. Paris  
Declarant

  
Signature

# Exhibit A

## I. EXCLUSIONARY CRITERIA FOR INMATES WITH PHYSICAL DISABILITIES

The presence of a significant physical disability<sup>1</sup> (e.g., paralysis, use of a wheelchair, blindness or severe vision impairment, deafness or severe hearing impairment) will not exclude an inmate from out-of-state transfer unless the inmate meets at least one of the following conditions:

- (a) Inmates whose medical condition related to a disability (active decubitus ulcers or severe bladder infections for paralyzed inmates) renders extended travel unsafe and/or requires active medical intervention;
- (b) Inmates who cannot perform daily living tasks (e.g., eating, dressing, hygiene) without personal assistance. (This category does not include inmates who merely require another person to carry a tray at meals or to read written documents.)
- (c) Inmates on dialysis

### Policy basics for the receiving institutions

Institutions that receive disabled inmates must meet Americans with Disabilities Act accessibility guidelines.

- (a) Barrier-free housing (i.e., wheelchair accessible housing, toilets, showers, paths of travel, and programming opportunities);
- b) Separate process that complies with the ADA for inmates with disabilities to request reasonable accommodations
- (c) Institutions shall ensure reasonable accommodations regarding auxiliary aids, (i.e., Sign Language Interpreters, TDD, large print magnifiers, etc.) to insure access to the programs, services and activities offered at the institution.
- (d) Policies and procedures to ensure non-discrimination in programming opportunities (e.g., educational and vocational programs, recreation) and custody functions (e.g., cuffing and count modifications, notification of alarms); and

<sup>1</sup> The issue of chronic disease is already included in the language so it does not need to be repeated here. This language need only concern disabilities not related to chronic disease.

- (e) Policies and procedures to ensure appropriate provision of assistive devices and health care appliances (wheelchairs, walkers, canes, tapping canes, crutches, hearing aids, glasses, etc.)

II. EXCLUSIONARY CRITERIA FOR INMATES WITH DEVELOPMENTAL DISABILITIES

DDO, DD2 and DD3 inmates should be excluded. DD1 and D1A inmates should be permitted to transfer on a case-by-case basis, based on their individual security needs.

- III. The receiving institution shall appoint an ADA coordinator to ensure the above requirements are met for qualifying inmates.

**DRAFT**